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## STATUTORY INSTRUMENTS

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**2015 No. 594**

### **EDUCATION, ENGLAND AND WALES**

#### **The Teachers' Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2015**

*Made* - - - - *5th March 2015*

*Laid before Parliament* *10th March 2015*

*Coming into force* - - *1st April 2015*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 9 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a) and section 1 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013(b).

In accordance with section 9(5) of the Superannuation Act 1972 and section 21(3) of the Public Service Pensions Act 2013, the Secretary of State has consulted representatives of local authorities, teachers and other persons likely to be affected.

In accordance with section 9(1) of the Superannuation Act 1972 and section 3(5) of the Public Service Pensions Act 2013, these Regulations are made with the consent of the Treasury.

#### **Citation and Commencement**

1. These Regulations may be cited as the Teachers' Superannuation (Additional Voluntary Contributions) (Amendment) Regulations 2015 and come into force on 1st April 2015.

#### **Amendments to the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994**

2. The Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994(c) are amended as set out in the following regulations.

#### **Amendments to regulation 2 (Interpretation)**

3. In regulation 2—

(a) after sub-paragraph (2)(e) insert—

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(a) 1972 c. 11; Section 9 was amended by; the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(1), 8(3) and (4) and 11(1) and (2); the Pension Schemes Act 1993, Schedule 8, paragraph 7; S.I. 2001/3649; 2010/1158; and the Public Service Pensions Act 2013 (c. 25), Schedule 8, paragraphs 6 and 9; there are other amendments not relevant to these Regulations. There are amendments to section 12 which are not relevant to these Regulations.

(b) 2013 c. 25

(c) S.I. 1994/2924; amended by S.I. 1995/2004, 1997/3001, 2000/666, 2000/3028, 2001/3649, 2005/2198, 2006/736, 2006/2214, 2006/3122, 2008/541, 2010/990, 2100/614 and 2013/472.

- “(f) references to the 2014 Regulations are references to the Teachers’ Pension Scheme Regulations 2014(a).”;
- (b) in paragraph (3), after the definition of “authorised provider” insert—
- ““AVC policy age” means—
- (a) except in the circumstances mentioned in sub-paragraphs (b), (c), (d) or (e), a person (P)’s normal pension age on the date P makes an election under regulation 4;
  - (b) if a transfer is made under regulation 10, a person (P)’s normal pension age at the date that written notice from P under regulation 10(1) is received by the Secretary of State;
  - (c) in respect of a pension credit member, the pension debit member’s normal pension age on the date that an election under regulation 4 is made by the pension debit member or notice from the pension debit member under regulation 10(1) is received by the Secretary of State;
  - (d) if a contributor or participator (P) realises all of the funds invested on P’s behalf under regulation 9(1) and 10(2) and makes a subsequent election under regulation 4, P’s normal pension age at the date of the subsequent election;
  - (e) if a person (P) is in pensionable service under the 2010 Regulations at the time of making an election under regulation 4, and has more than one normal pension age under regulation 48 of those Regulations, P’s normal pension age in relation to P’s pensionable service on the date P makes the election;”;
- (c) in paragraph (3), for the definition of “civil partner” substitute—
- “is to be construed in accordance with section 1 of the Civil Partnership Act 2004(b).”;
- (d) in paragraph (3), in the definition of “dependent”, for sub-paragraphs (a) to (c) substitute—
- “(a) any surviving spouse or surviving civil partner;
  - (b) any person who is an eligible child as defined in regulation 98 of the 2010 Regulations or regulation 137 of the 2014 Regulations;
  - (c) any person in respect of whom at the time of death of the participator or contributor a nomination under regulation 90 or 91 of the 2010 Regulations or regulation 135 or 136 of the 2014 Regulations has effect;
  - (d) any surviving adult as defined in regulation 134 of the 2014 Regulations;”;
- (e) in paragraph (3), in the definition of “insurance company”, for “Part 4” substitute “Part 4A”;
- (f) in paragraph (3), for the definition of “normal pension age” substitute—
- “in the case of a person who, at the time of making an election under regulation 4, is in pensionable service under the 2010 Regulations is to be construed in accordance with the 2010 Regulations, and in the case of a person who, at the time of making an election under regulation 4, was in pensionable service under the 2014 Regulations is to be construed in accordance with the 2014 Regulations;”;
- (g) in paragraph (3), omit the definition of “old regulation C9 of the 1997 regulations”;
- (h) in paragraph (3), in the definition of “participator”—
- (i) at the end of sub-paragraph (a) insert “in respect of all investments made under regulation 9(1) and 10(2) and has not made a further election under regulation 4 in respect of further pensionable service”;

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(a) S.I. 2014/512; amended by S.I. 2014/2652 and 2014/3255.

(b) 2004 c. 33; section 1 was amended by the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 7, Part 2, paragraphs 33 and 34(a) and (b).

- (ii) at the end of sub-paragraph (c) insert “and who is not otherwise a contributor”;
- (i) in paragraph (3), after the definition of “participator” insert—
  - ““pension commencement lump sum” is to be construed in accordance with Part 1 of Schedule 29 to the 2004 Act;”;
- (j) after the definition of “pension sharing order” insert—
  - ““pensionable service” is to be construed in accordance with section 37 of the Public Service Pensions Act 2013(a);
  - “qualifying recognised overseas pension scheme” is to be construed in accordance with section 169 of the 2004 Act;”;
- (k) in paragraph (3), omit the definition of “pensionable employment”;
- (l) in paragraph (3), omit the definition of “reckonable service”;
- (m) in paragraph (3), in the definition of “salary”, for sub-paragraphs (a) and (b) substitute—
  - “(a) where a person is in pensionable service under the 2010 Regulations at the time the contribution is paid, the salary calculated in accordance with regulations 15 and 16 of the 2010 regulations and regulation C2 of the 1997 Regulations as it has effect by virtue of paragraph 6 of Schedule 13 to the 2010 Regulations;
  - (b) where a person is in pensionable service under the 2010 Regulations at the time the contribution is paid in relation to contributions payable under regulation 19 of the 2010 Regulations the salary determined in accordance with the provisions of those regulations for the purposes of calculating those contributions;
  - (c) where a person is in pensionable service under the 2014 Regulations at the time the contribution is paid, in relation to pensionable earnings under Chapter 4 of Part 3 of the 2014 Regulations, the earnings determined in accordance with the provisions of that Chapter;”;
- (n) in paragraph (3), after the definition of “tax year” insert—
  - ““uncrystallised fund pension lump sum” is to be construed in accordance with section 166 of the 2004 Act.”.

#### **Amendment to regulation 3 (Making and acceptance of elections)**

- 4. In regulation 3, after paragraph (3) insert—
  - “(4) The date of an election under these Regulations shall be the date on which written notice is received by the Secretary of State.”.

#### **Amendments to regulation 4 (Election to pay regular and lump sum contributions)**

- 5. In regulation 4(1), for “pensionable employment” substitute “pensionable service”.

#### **Amendments to regulation 5 (Provision for lump sum death benefit)**

- 6. In regulation 5—
  - (a) in paragraph (2), for “a pension policy” substitute “an annuity policy”;
  - (b) for paragraph (4) substitute—
    - “(4) A person (P) who has continued to pay regular contributions up to P’s AVC policy age, but does not then cease to be in pensionable service, may elect to pay regular contributions up to P’s first birthday after P reached AVC policy age to provide for a lump sum death benefit unless the authorised provider determines that provision under this regulation shall continue without the need for the authorised provider to verify P’s entitlement to that provision; and, so long as P has not ceased to be in pensionable service,

further elections may be made annually in respect of years commencing on P's first birthday after P reached AVC policy age and subsequent birthdays.”;

(c) for paragraph (5) substitute—

“(5) An election made by P under paragraph 4 lapses if P retires, ceases to be in pensionable service during the year in question or ceases to pay contributions pursuant to an election under regulation 4(1).”.

#### **Amendment to regulation 6 (Variation and cancellation of elections)**

7. In regulation 6(3)(a) omit “subject to regulation 8(3)”.

#### **Amendments to regulation 7 (Contributor)**

8. In regulation 7—

(a) for paragraph (2) substitute—

“(2) Before 6th April 2015, a person ceases to be a contributor if that person—

- (a) has become entitled to retirement benefits under Schedule 7 to the 2010 Regulations;
- (b) has, under regulation 6(1)(d) or 6(3)(c), cancelled the election to pay regular contributions; or
- (c) subject to paragraph (3), has ceased to be in pensionable service and is not paying contributions under regulation 19 of the 2010 Regulations or regulation 26 of the 2014 Regulations.

(2A) On and from 6th April 2015 onwards, a person (P) ceases to be a contributor if P—

- (a) has realised all of the funds invested on P's behalf under regulations 9(1) and 10(2) and has not made a subsequent election under regulation 4 in respect of further pensionable service;
  - (b) has, under regulation 6(1)(d) or 6(3)(c), cancelled the election to pay regular contributions; or
  - (c) subject to paragraph (3), has ceased to be in pensionable service and is not paying contributions under regulation 19 of the 2010 Regulations or regulation 26 of the 2014 Regulations.”;
- (b) in paragraph (3), for each reference to “pensionable employment” substitute “pensionable service”.

#### **Amendments to regulation 10 (Inward transfers)**

9. In regulation 10—

(a) for paragraph (1) substitute—

“(1) Where a person in pensionable service (P) has been a member of a registered pension scheme or a qualifying recognised overseas pension scheme, P, whether or not P becomes a contributor (within the meaning of these Regulations), may give written notice to the Secretary of State that P wishes the Secretary of State to accept from the trustees or manager of that scheme a value of the transfer from that scheme.”;

(b) in paragraph (2), for “wishes of the person entering pensionable employment” substitute “election made under regulation 4(2)(c)”.

(c) after paragraph (2) insert—

“(3) A person who has given written notice under paragraph (1) may at any time by giving written notice to the Secretary of State require the Secretary of State to realise any investment and to re-invest the proceeds under paragraph (2) in a different way.”.

## **Amendment to regulation 11 (Outward transfers)**

### **10. In regulation 11—**

- (a) in paragraph (1)—
  - (i) omit “who has ceased to be a contributor by virtue of regulation 7(2)”;
  - (ii) before “the value of investments” insert “some or all of”;
  - (iii) after “registered pension scheme” insert “or a qualifying recognised overseas pension scheme”;
- (b) in paragraph (2), for “a person who has given written notice to the Secretary of State” substitute “investments which are subject to written notice”.

## **Amendments to regulation 12 (Retirement and dependents’ benefits)**

### **11. In regulation 12—**

- (a) for paragraphs (1) and (1A), substitute—

“(1) In this regulation “the relevant date”, in relation to a contributor or participator, means—

  - (a) in the case of a person who applies for benefits in pensionable service under the 2010 Regulations, the date the person attains the age of 55;
  - (b) in the case of a person who applies for benefits in pensionable service under the 2014 Regulations, the date the person attains normal minimum pension age as defined in regulation 3 of the 2014 Regulations;

unless the circumstance in regulation 12(10) occurs before that date.

(1A) The benefits that may be provided at any time after the relevant date in accordance with paragraph (7) are—

- (a) one or more retirement pensions;
  - (b) one or more dependants’ pensions;
  - (c) one or more pension commencement lump sums;
  - (d) on and from 6th April 2015 onwards, one or more uncrystallised fund pension lump sums.”;
- (b) in paragraph (2), after “is payable to the” insert “contributor or”;
- (c) in paragraph (3)—
  - (i) for “his retirement” substitute “payment of benefits has commenced as provided in paragraph (1A)”;
  - (ii) for “who is a child” substitute “who is an eligible child”;
  - (iii) for “the 1988 Regulations” substitute “regulation 98 of the 2010 Regulations or regulation 137 of the 2014 Regulations”;
- (d) in paragraph (5)—
  - (i) for “A participator may” substitute “A contributor or participator may in respect of some or all of the investments made under regulation 9(1) or 10(2)”;
  - (ii) in sub-paragraph (a) for “a” substitute “any”;
  - (iii) after sub-paragraph (f) insert—

“(g) whether an uncrystallised fund pension lump sum is to be paid and, if so, the amount of such payment.”;
- (e) in paragraph (6), for “being a period of no less than 5 years and no more than 10 years” substitute “of a duration permitted by Schedule 28 to the 2004 Act”;
- (f) in paragraph (7)—
  - (i) before “the investments” insert “some or all of”;

- (ii) after “regulation 9(1) or 10(2) and” insert “either”;
- (iii) for sub-paragraph (a) substitute—
  - “(a) (i) out of the amount obtained make any payment of a pension commencement lump sum in accordance with the election; and
  - (ii) apply the balance of the amount obtained to the purchase of a pension policy from an authorised provider chosen by the contributor or participator to provide the benefits specified in the election; or”;
- (iv) for sub-paragraph (b) substitute—
  - “(b) pay an uncrystallised fund pension lump sum;”;
- (g) omit paragraph 8;
- (h) for paragraph (9) substitute—
  - “(9) The remaining investments shall be realised and become payable as a lump sum if the participator dies—
    - (a) before the relevant date; or
    - (b) after the relevant date and before all the investments made under regulation 9(1) and 10(2) have been realised in accordance with one or more elections under paragraph 5 or applications under regulation 11(1).”;
  - (i) in paragraph (11), for “a trivial commutation lump sum as defined in paragraph 7 of Schedule 29 to the 2004 Act” substitute “a small pension lump sum as defined in regulations 11, 11A and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009(a)”.

#### **Amendments to regulation 13A (Pension sharing on divorce)**

##### **12. In regulation 13A—**

- (a) in paragraph (2), for “regulation 10(4)” substitute “regulation 10”;
- (b) for paragraphs (3) and (4) substitute—
  - “(3) The benefits that may be provided to the pension credit member are—
    - (i) one or more pension policies purchased as described in regulation 12(7) as modified in relation to this regulation for the purpose of providing a retirement pension or one or more dependant’s pensions;
    - (ii) one or more pension commencement lump sums;
    - (iii) one or more uncrystallised fund pension lump sums.
  - (4) The benefits mentioned in paragraph 3 shall commence no earlier than the date the pension credit member attains normal minimum pension age as defined in regulation 3 of the 2014 Regulations and in the case of benefits under sub-paragraph (3)(i) are payable for life.”;
- (c) in paragraph (5), after “2010 Regulations” insert “or the 2014 Regulations”;
- (d) omit sub-paragraph (7)(b).

#### **Amendments to regulation 15 (Repayment of investments in certain cases)**

##### **13. For regulation 15(1) substitute—**

“(1) The Secretary of State shall make arrangements for a person to receive a lump sum representing the total realisable value of the investments made by the Secretary of State in respect of that person under regulation 9(1) or 10(2) where the person—

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(a) S.I. 2009/1171; regulation 11 was amended by S.I. 2011/1751 and the Finance Act 2014 (c. 26) section 42(6)(a) and (c); regulation 11A was inserted by S.I. 2012/522 and amended by the Finance Act 2014, section 42(6)(a) and (d); regulation 12 was amended by S.I. 2011/1751 and the Finance Act 2014, section 42(6)(a) and (e).

- (a) before 1st October 2015, ceases to be in pensionable service and has applied for and received a return of contributions under regulation 22 of the 2010 Regulations or regulation 189 of the 2014 Regulations;
- (b) on and from 1st October 2015 onwards, ceases to be in pensionable service and has a period of qualifying service which is less than 30 days.”.

#### **Amendments to regulation 16 (Payment by Secretary of State)**

##### **14. In regulation 16—**

- (a) in paragraphs (1) and (2), for every reference to “pension policy” and “policy” substitute “annuity policy”;
- (b) in sub-paragraph (2)(a) omit “12(8) or”;
- (c) in sub-paragraph (2)(b)(ii), for “pensionable employment” substitute “pensionable service”;
- (d) in paragraph (2B)—
  - (i) before “lump sum” insert “pension commencement”;
  - (ii) after “regulation 12(1A)” insert “or 13A(3)(ii)”;
- (e) in paragraph (2D)—
  - (i) after “regulation 12” insert “or 13A”;
  - (ii) before “lump sum” insert “pension commencement”;
- (f) in paragraph (3), for “the person or persons to whom any death grant is payable under regulation 82 of the 2010 Regulations” substitute “the personal representatives of the person to whom the payment is due”.

5th March 2015

We consent

*David Laws*  
Minister of State  
Department for Education

27th February 2015

*Mark Lancaster*  
*David Evennett*  
Two of the Lords Commissioners of Her Majesty’s Treasury

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations amend the Teachers’ Superannuation (Additional Voluntary Contributions) Regulations 1994 (“the 1994 Regulations”) to permit members of the Teachers’ Pension Scheme 2015 access to the additional voluntary contributions scheme (“the scheme”), to enable members to utilise the additional flexibilities for defined contribution pension schemes provided for in the Pension Schemes Act 2015 and to take account of changes to tax treatment of individuals’ pension funds introduced by the Taxation of Pensions Act 2014.

*Regulation 3* makes amendments to the interpretation provisions of the 1994 Regulations and inserts a number of new definitions. In particular it provides a definition of “AVC policy age” to fix a person’s normal pension age as at the date of an election under regulation 4 or notice under regulation 10 of the 1994 Regulations.

*Regulation 4* inserts new provision as to the date that an election under the 1994 Regulations is deemed to be made.

*Regulation 6* amends regulation 5 of the 1994 Regulations to allow life cover to continue after a person reaches AVC policy age and makes other, minor amendments.

*Regulation 8* amends regulation 7 of the 1994 Regulations to make new provision for a person to cease to be a contributor to the scheme from 6th April 2015, and updates the existing provision for a person so to cease prior to 6th April 2015.

*Regulations 9 and 10* amend regulations 10 and 11 of the 1994 Regulations to broaden the circumstances in which transfers of funds into and out of the scheme may be made, in particular by permitting transfers from and into a qualifying recognised overseas pension scheme.

*Regulation 11* makes a number of amendments to regulation 12 of the 1994 Regulations. In particular it permits from 6th April 2015 the purchase of one or more uncrystallised fund pension lump sums from realised funds, and the crystallisation of funds to purchase any of the benefits permitted by the regulation.

*Regulation 12* makes a number of amendments to regulation 13A of the 1994 Regulations, in particular by broadening the range of benefits which can be purchased under the regulation.

*Regulation 13* amends regulation 15 of the 1994 regulations, in particular to introduce, from 1st October 2015, a requirement that a return of contributions by the Secretary of State to a person who ceases to be in pensionable service under that regulation may only be made if the person has less than 30 days' qualifying service.

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations. The instrument has a minimal impact on the public sector.

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